

# SENATE JOURNAL

OF THE

## IDAHO LEGISLATURE

FIRST REGULAR SESSION  
FIFTY-EIGHTH LEGISLATURE

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**FIFTY-FOURTH LEGISLATIVE DAY  
FRIDAY, MARCH 4, 2005**

Senate Chamber

President Risch called the Senate to order at 10 a.m.

Roll call showed all members present except Senator Marley, absent and formally excused by the Chair; and Senators Brandt, Gannon, Schroeder, Stegner, and Sweet, absent and excused.

Prayer was offered by Chaplain Don Hardenbrook.

The Pledge of Allegiance was led by Sam Vanderwall, Page.

The Senate advanced to the Third Order of Business.

### Reading and Correction of the Journal

Senator Sweet was recorded present at this order of business.

The JUDICIARY AND RULES Committee reports that the Senate Journal of the proceedings of March 3, 2005, was read and approved as corrected.

DARRINGTON, Chairman

There being no objection, the report was adopted and ordered filed in the office of the Secretary of the Senate.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Sixth Order of Business.

### Reports of Standing Committees

Senators Brandt, Gannon, and Stegner were recorded present at this order of business.

March 4, 2005

The JUDICIARY AND RULES Committee reports that **S 1172**, **S 1173**, and **S 1174** have been correctly printed.

DARRINGTON, Chairman

**S 1172** and **S 1173** were referred to the Education Committee.

**S 1174** was referred to the State Affairs Committee.

March 3, 2005

The COMMERCE AND HUMAN RESOURCES Committee reports out **H 111**, **H 112**, **H 113**, **H 114**, **H 115**, **H 116**, **H 117**, **H 118**, and **H 119** with the recommendation that they do pass.

ANDREASON, Chairman

**H 111**, **H 112**, **H 113**, **H 114**, **H 115**, **H 116**, **H 117**, **H 118**, and **H 119** were filed for second reading.

March 3, 2005

The TRANSPORTATION Committee reports out **H 102**, **H 146**, and **H 147** with the recommendation that they do pass.

BRANDT, Chairman

**H 102**, **H 146**, and **H 147** were filed for second reading.

March 4, 2005

The HEALTH AND WELFARE Committee reports out **S 1163** with the recommendation that it be referred to the Fourteenth Order of Business for amendment.

COMPTON, Chairman

There being no objection, **S 1163** was referred to the Fourteenth Order of Business, General Calendar.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Ninth Order of Business.

### Messages from the House

Senator Schroeder was recorded present at this order of business.

March 3, 2005

Mr. President:

I transmit herewith **H 235**, **HCR 15**, **H 202**, **H 72**, **H 73**, **H 74**, **H 75**, **H 159**, and **H 163** which have passed the House.

JUKER, Chief Clerk

**H 235**, **HCR 15**, **H 202**, **H 72**, **H 73**, **H 74**, **H 75**, **H 159**, and **H 163** were filed for first reading.

March 3, 2005

Mr. President:

I transmit herewith Enrolled **H 46**, **H 47**, and **H 103** for the signature of the President.

JUKER, Chief Clerk

The President signed Enrolled **H 46**, **H 47**, and **H 103** and ordered them returned to the House.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Eleventh Order of Business.

**Introduction, First Reading and Reference of Bills,  
House Petitions, Resolutions, and Memorials**

**S 1175**

**BY FINANCE COMMITTEE**

**AN ACT**

APPROPRIATING MONEYS TO THE DEPARTMENT OF FINANCE FOR FISCAL YEAR 2006; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

**S 1176**

**BY FINANCE COMMITTEE**

**AN ACT**

APPROPRIATING MONEYS TO THE DEPARTMENT OF FISH AND GAME FOR FISCAL YEAR 2006; AND LIMITING THE NUMBER OF AUTHORIZED FULL-TIME EQUIVALENT POSITIONS.

**S 1177**

**BY FINANCE COMMITTEE**

**AN ACT**

APPROPRIATING MONEYS TO THE DEPARTMENT OF INSURANCE FOR FISCAL YEAR 2006; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

**S 1178**

**BY FINANCE COMMITTEE**

**AN ACT**

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE OFFICE OF SPECIES CONSERVATION FOR FISCAL YEAR 2006; AND LIMITING THE NUMBER OF FULL-TIME EQUIVALENT POSITIONS.

**S 1175, S 1176, S 1177, and S 1178** were introduced, read the first time at length, and referred to the Judiciary and Rules Committee for printing.

**H 235**, by State Affairs Committee, was introduced, read the first time at length, and referred to the Health and Welfare Committee.

**HCR 15**, by Revenue and Taxation Committee, was introduced, read at length, and referred to the Health and Welfare Committee.

**H 202**, by Judiciary, Rules, and Administration Committee, was introduced, read the first time at length, and referred to the Education Committee.

**H 72, H 73, H 74, H 75, and H 159**, by Business Committee, were introduced, read the first time at length, and referred to the Commerce and Human Resources Committee.

**H 163**, by Business Committee, was introduced, read the first time at length, and referred to the State Affairs Committee.

Pursuant to Senate Rule 14(C), Senator Davis objected to the referral of **H 163** to the State Affairs Committee and requested that **H 163** be referred to the Commerce and Human Resources Committee.

The President denied the request.

Moved by Senator Davis, seconded by Senator Andreason, that **H 163** be referred to the Commerce and Human Resources Committee.

Roll call vote was requested by Senators Goedde, Keough, and Stennett.

The question being, "Shall **H 163** be referred to the Commerce and Human Resources Committee?"

Roll call resulted as follows:

AYES--Andreason, Burkett, Coiner, Compton, Davis, Gannon, Goedde, Kelly, Keough, Langhorst, Little, Lodge, Malepeai, Schroeder, Stegner, Stennett, Werk. Total - 17.

NAYS--Brandt, Broadsword, Bunderson, Burtenshaw, Cameron, Corder, Darrington, Geddes, Hill, Jorgenson, McGee, McKenzie, Noble, Pearce, Richardson, Sweet, Williams. Total - 17.

Absent and excused--Marley. Total - 1.

Total - 35.

The roll call having resulted in a tie vote, the President voted AYE, declared that the motion did prevail, and **H 163** was referred to the Commerce and Human Resources Committee.

The Senate advanced to the Twelfth Order of Business.

**Second Reading of Bills**

**H 34** and **H 170**, by Agricultural Affairs Committee, were read the second time at length and filed for third reading.

**H 78, H 79, H 80, H 81, H 82, and H 131**, by Judiciary, Rules, and Administration Committee, were read the second time at length and filed for third reading.

**S 1169**, by State Affairs Committee, was read the second time at length and filed for third reading.

**H 262**, by Appropriations Committee, was read the second time at length and filed for third reading.

**H 176**, by Environment, Energy, and Technology Committee, was read the second time at length and filed for third reading.

The Senate advanced to the Thirteenth Order of Business.

**Third Reading of Bills**

On request by Senator Davis, granted by unanimous consent, **S 1121** retained its place on the Third Reading Calendar for Monday, March 7, 2005.

**S 1126**, having been held, was read the third time at length, section by section, and placed before the Senate for final consideration. Senator McKenzie arose as sponsor of the bill and opened the debate. The question being, "Shall the bill pass?"

Roll call resulted as follows:

AYES--Andreason, Brandt, Broadsword, Bunderson, Burtenshaw, Cameron, Coiner, Compton, Corder, Darrington, Davis, Gannon, Geddes, Goedde, Hill, Jorgenson, Kelly, Keough, Little, Lodge, McGee, McKenzie, Noble, Pearce, Richardson, Stegner, Werk, Williams. Total - 28.

NAYS--Burkett, Langhorst, Malepeai, Marley, Schroeder, Stennett, Sweet. Total - 7.

Paired and voting included in roll call:

AYE - Davis      NAY - Marley

Total - 35.

Whereupon the President declared **S 1126** passed, title was approved, and the bill ordered transmitted to the House.

On request by Senator Davis, granted by unanimous consent, **H 262** was placed at the head of the Third Reading Calendar, followed by Senate bills, followed by House bills.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fourteenth Order of Business.

### General Calendar

The President declared the Senate resolved into the Committee of the Whole and called Senator Stegner to the Chair to preside during the sitting of the Committee of the Whole.

Following the adjournment of the Committee of the Whole, the President called the Senate to order.

### Report of the Committee of the Whole

Senator Stegner, Chairman of the Committee of the Whole, reported out **S 1148** without amendment and with the recommendation that it be referred to the Education Committee; and **S 1154, S 1086, S 1136, H 50, S 1130, H 122, S 1044, and S 1161**, without recommendation, amended as follows:

#### SENATE AMENDMENT TO S 1154

##### AMENDMENT TO SECTION 1

On page 2 of the printed bill, in line 32, following "shall" delete "not".

#### SENATE AMENDMENT TO S 1086

##### AMENDMENTS TO SECTION 1

On page 1 of the printed bill, in line 33, delete "(a)"; in line 34, delete "ai" and insert: "a"; in line 37, delete "bii" and insert: "b"; and delete line 43; on page 2, delete lines 1 through 4; in line 6, delete ", except"; delete lines 7, 8 and 9, and in line 10, delete "sonal effects"; in line 14, following "estate." insert: "However, if an exempt property allowance claim is made in an estate subject to a claim under this section by one (1) or more persons not described in subsection (2) of this section, then, to the extent such exempt property allowance claim exceeds the fair market value of the actual personal property of the decedent held by the estate subject to a claim under this section (including, but not limited to, such items as household furniture, automobiles, furnishings, appliances, and personal effects), the persons making such exempt property

allowance claim must file with the court, and with the personal representative or administrator of the estate, and with the department, a written statement under oath containing the following:

(a) A statement that no personal property of the decedent has been transferred without adequate consideration to any person or entity, including any one (1) or more of the persons making the exempt property allowance claim, to the actual knowledge of any of the persons making the exempt property allowance claim, within a time period commencing one (1) year prior to the death of the decedent and ending on the date of the statement; or

(b) A statement that personal property of the decedent has been transferred without adequate consideration to any person or entity, including one (1) or more of the persons making the exempt property allowance claim, within a time period commencing one (1) year prior to the death of the decedent and ending on the date of the statement, to the actual knowledge of any of the persons making the exempt property allowance claim, and stating the fair market value of the personal property so transferred, and stating a reasonable description of such property, and stating the method of determining the fair market value of the personal property so transferred.

If the written statement indicates that there has been such a transfer of personal property, then the fair market value of the personal property so transferred shall be subtracted from the remaining exempt property allowance claim, after subtraction of the personal property held by the estate, as described above, and only any still remaining portion of the exempt property claim may be paid by the estate to the persons making the exempt property allowance claim. The statement submitted under paragraph (a) or (b) of this subsection, must be signed under oath by all persons making the exempt property claim."; in line 23, delete "The department shall"; delete line 24; and in line 25, delete "lien."

### CORRECTIONS TO TITLE

On page 1, in line 4, following "ASSISTANCE" insert: "TO PROVIDE A PROCEDURE FOR AN EXEMPT PROPERTY ALLOWANCE CLAIM".

### SENATE AMENDMENTS TO S 1136

#### AMENDMENTS TO SECTION 1

On page 2 of the printed bill, delete lines 1 through 16 and insert:

"(4) (a) Any firearm or ammunition that meets the established specifications for official law enforcement duty use and will be used for official law enforcement duty use and which has come into the possession or custody of the sheriff of any county in this state or the city police department of any city in this state by reason of the firearm or ammunition having been abandoned, impounded or otherwise acquired by the sheriff or city police department, or if originally released or discharged from the attachment or other process under which it was taken into custody and which remains unclaimed or unredeemed by the owner or person entitled to possession thereof for more than six (6) months from the date of such abandonment, impoundment, leaving or release from attachment or other process under which the firearm or ammunition was originally taken into custody, as the case may be, may be converted by the county sheriff or city police department in the county or city in which it was first acquired. A serial number record shall be maintained for all firearms thus converted, and such record shall include the description, acquisition and disposition for each firearm converted.

(b) Any firearm or ammunition not converted for official law enforcement duty use as provided in subsection (4)(a) of this section, where such firearm or ammunition may be lawfully possessed by a licensed firearm dealer, shall be subject to sale to a licensed firearm dealer by sealed or opened bids after notification as provided in subsection (2) of this section. If no sale is completed for the firearm or ammunition pursuant to this paragraph (b), the firearm or ammunition may be converted to public agency owner-";

in line 18, following "each firearm" insert: "or any ammunition"; and also in line 18, following "the firearm" insert: "or ammunition"; in line 19, following "firearm" insert: "or ammunition"; in line 20, following "firearm" insert: "or ammunition"; and following line 23 insert:

"(c) Notwithstanding any other provision of law, a court shall direct the county sheriff or city police department to dispose of any firearm that has been used in the commission of a homicide in a manner the sheriff or city police department deems appropriate, provided however, this paragraph (c) shall not apply to a firearm confiscated or otherwise acquired pursuant to an action under section 18-4009, 18-4011 or 18-4012, Idaho Code."

#### AMENDMENTS TO THE BILL

On page 1, following line 6 insert:

"SECTION 1. That Section 19-3807, Idaho Code, be, and the same is hereby amended to read as follows:

19-3807. CONFISCATION OF FIREARMS, EXPLOSIVES OR CONTRABAND UPON CONVICTION. (1) At the time any person is convicted of a felony in any court of the state of Idaho, firearms, ammunition, bombs, nitroglycerin, or explosives of any nature, including illegal fireworks, or any other deadly weapons or contraband of any kind found in his possession or under his control at the time of his arrest may be confiscated and disposed of in accordance with the order of the court before which such person was tried. "Contraband" as used in this section shall mean any personal property, possession of which is illegal under the laws of the state of Idaho or the United States.

(2) Notice of confiscation proceedings shall be given to each owner or person who is believed to have an interest in the property in question by serving a copy of the state's motion describing the property with a notice of hearing on the motion as follows:

(a) Upon each owner or interested party whose name and address is known, by mailing a copy of the state's motion to confiscate and notice of hearing by certified mail to the owner or party's last known address, or to his attorney;

(b) Upon all other owners or interested parties whose addresses are unknown, but who are believed to have an interest in the property, by publishing one (1) notice in a newspaper of general circulation in the county where the property was seized.

(3) Within twenty (20) days after the mailing or publication of the notice, the owner of the property in question and any other interested party may file with the court a claim to the property described in the motion to confiscate.

(4) If one (1) or more claims are filed, the confiscation proceeding shall be set for hearing at least thirty (30) days after the last timely claim is filed.

(5) At the confiscation hearing any person who has filed a timely claim may show by competent evidence that the property in question was not in the possession or control of the defendant at the time of his arrest or that the owner is innocent of any involvement in the acts which led to the defendant's arrest, in

which case the court may return the property to the owner or interested person or order any other disposition which is appropriate under the circumstances.

(6) If no claim has been filed within twenty (20) days after the state's motion to confiscate and notice of hearing has been mailed or published, the court shall hear evidence concerning the defendant's possession and control of the property in question at the time of arrest. If it finds that the property was in the defendant's possession and control at the time of arrest or, if pursuant to subsection (5) ~~above of this section~~, the court rejects any claim which has been filed, the court may direct the delivery to the law enforcement agency which apprehended the defendant, for its use or for any other disposition in its discretion or, in the case of a firearm or ammunition, the court shall direct the delivery to the law enforcement agency which apprehended the defendant for disposition in accordance with section 55-403(4), Idaho Code."; on page 1, in line 7, delete "SECTION 1" and insert: "SECTION 2"; and on page 2, in line 29, delete "SECTION 2" and insert: "SECTION 3".

#### CORRECTION TO TITLE

On page 1, in line 2, following "PROPERTY;" insert: "AMENDING SECTION 19-3807, IDAHO CODE, TO REVISE PROVISIONS APPLICABLE TO THE CONFISCATION OF FIREARMS OR AMMUNITION AND TO MAKE TECHNICAL CORRECTIONS;"

#### SENATE AMENDMENT TO H 50

##### AMENDMENT TO SECTION 1

On page 1 of the printed bill, delete line 14 and insert: "not counting as a student for purposes of the student-instructor ratio";

#### CORRECTION TO TITLE

On page 1, delete lines 3 and 4 and insert: "STUDENT TO INSTRUCTOR RATIO, TO CLARIFY THAT STUDENT INSTRUCTORS DO NOT COUNT AS STUDENTS FOR PURPOSES OF THE RATIO AND TO INCREASE THE AMOUNT OF THE".

#### SENATE AMENDMENT TO S 1130

##### AMENDMENT TO SECTION 1

On page 1 of the printed bill, in line 15, following "director" insert: ", except the provisions of this section shall not apply when such vehicles are operated or ridden on private property, or when used as an implement of husbandry".

#### CORRECTION TO TITLE

On page 1, in line 5, following "HELMET" insert: "AND TO PROVIDE EXCEPTIONS".

#### SENATE AMENDMENT TO H 122

##### AMENDMENT TO SECTION 1

On page 8 of the printed bill, delete lines 26 through 34.

#### CORRECTION TO TITLE

On page 1, delete lines 16 and 17 and insert: "ATTORNEY GENERAL OF THE STATE OF IDAHO; AMENDING SECTION 67-2601, IDAHO CODE, TO PROVIDE THAT THE DEPARTMENT".

**SENATE AMENDMENT TO S 1044**

**AMENDMENT TO SECTION 1**

On page 2 of the printed bill, in line 4, delete "Commit" and insert: "Unless specifically authorized by another provision of law, commit".

**SENATE AMENDMENT TO S 1161**

**AMENDMENT TO SECTION 1**

On page 2 of the printed bill, delete lines 32 through 38.

**CORRECTION TO TITLE**

On page 1, in line 8 following "RULEMAKING," insert: "AND"; and delete lines 13 through 18 and insert: "ENFORCEABILITY OF THE RULE."

The Committee also has **H 150** and **S 1163** under consideration, reports progress, and begs leave to sit again.

STEGNER, Chairman

On motion by Senator Stegner, seconded by Senator Malepeai, the report was adopted by voice vote.

**S 1154**, as amended, **S 1086**, as amended, **S 1136**, as amended, **S 1130**, as amended, **S 1044**, as amended, and **S 1161**, as amended, were referred to the Judiciary and Rules Committee for engrossing and the amendments thereto were referred to the Judiciary and Rules Committee for printing.

**H 50**, as amended in the Senate, and **H 122**, as amended in the Senate, were filed for first reading as amended, and the amendments thereto were referred to the Judiciary and Rules Committee for printing.

**S 1148** was referred to the Education Committee.

On request by Senator Davis, granted by unanimous consent, the Senate advanced to the Fifteenth Order of Business.

**Miscellaneous Business**

On motion by Senator Davis, seconded by Senator Stennett, by voice vote the Senate adjourned at 12:05 p.m. until the hour of 10 a.m., Monday, March 7, 2005.

JAMES E. RISCH, President

Attest: JEANNINE WOOD, Secretary